IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 11378 of 2007(D)

AGAINST THE DISMISSAL OF EA NO.25/07 IN EP.NO.241/06 IN OS.433/2000 of MUNSIFF COURT, PARAVUR

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PETITIONER:

AJITHKUMAR, S/O.SUSHEELAN,
MANGADANKATTIL, PALIYATHURUTHUKARA,
MOOTHAKUNNAM VILLAGE, N.PARAVUR,
ERNAKULAM DIST.

BY ADV. SMT.JEENA JOSEPH
SRI.G.D.PANICKER

RESPONDENT:

VENUGOPAL, S/O.THYAGARAJAN,
KANNARIPARAMBIL, CHIYAMKOVIL,
N.PARUR, ERNAKULAM DIST.

BY ADV. SRI. K.J. JOSHWA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.11378/2007 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE EXECUTIION PETITION NO.241/2006 FILED BY THE RESPONDENT IN O.S.NO.433/2000.**

EXT.P2: **COPY OF THE COUNTER FILED BY THE PETITIONER TO E.P.NO. 241/2006.**

EXT.P3: **COPY OF THE E.A.25/2007 FILED BY THE PETITIONER AND ITS ORDER DTD. 21/02/2007.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No.11378 OF 2007 D

Dated this the 28th May, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order dated 21.2.2007 and 17.1.2007 in E.A.25/2007 in E.P.241/2006 in O.S.433/2000 of the Munsiff Court, North Parur. The Execution petition was filed for realising the amount by way of arrest and detention of the judgment debtor in civil prison. The judgment debtor did not respond to the notice properly. The decree holder filed an affidavit to prove the means and therefore, the Court on 17.1.2007 passed an order to issue arrest warrant. Subsequently, the judgment debtor moved Ext.P3 application to review that order. The said review application was dismissed by the executing court on the ground that it is not in the proper form as contemplated by the Civil Procedure Code. It is against this decision the present writ petition is filed. The decree holder has also entered appearance. There is a desire for the judgment debtor to wipe off the liability, provided some time and opportunity is given to pay the amount in instalments. In fairness, counsel for the decree holder also submits that a reasonable time can be granted. Therefore, the writ petition is disposed of by setting aside the orders of the

trial court as follows:-

i) The judgment debtor is directed to pay an amount of Rs.35,000/- (Rupees thirty five thousand only) within a period of six weeks from today to the decree holder or its counsel.

ii) The balance amount shall be paid by him in five equal monthly instalments.

iii) In case of default of payment of Rs.35,000/- within the stipulated period or default in payment of any of the instalments, the decree holder will be at liberty to proceed against the judgment debtor for issuance of warrant and detention in civil prison and the judgment debtor shall not be entitled to raise the plea of no means.

M.N.KRISHNAN
Judge

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